

Residential Care Alternatives for Adults

Statutory References

(These excerpts are provided as an overview, please refer to the full statutory citation for comprehensive information.)

Mental Health, Developmental Disabilities, and Substance Abuse

§ 122C-3. Definitions.

The following definitions apply in this Chapter:

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- (11a) **"Day/night service"** means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

...

- (12a) **"Developmental disability"** means a severe, chronic disability of a person which:
- Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
 - Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or
 - When applied to children from birth through four years of age, may be evidenced as a developmental delay.

...

- (14) **"Facility"** means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
- An **"area facility"**, which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
 - A **"licensable facility"**, which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

- c. A "**private facility**", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
 - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
 - e. A "**residential facility**", which is a 24-hour facility that is not a hospital, including a group home;
 - f. A "**State facility**", which is a facility that is operated by the Secretary;
 - g. A "**24-hour facility**", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
 - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.
- ...
- (21) "**Mental illness**" means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.
- ...
- (33a) "**Severe and persistent mental illness**" means a mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.
- ...

Chapter 122, Article 2.

Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers.

§ 122C-21. Purpose.

The purpose of this Article is to provide for licensure of facilities for the mentally ill, developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing:

- (1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and
- (2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals. The Department shall ensure that licensable facilities are inspected every two years to determine compliance with physical plant and life-safety requirements.

§ 122C-22. Exclusions from licensure; deemed status.

(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

- (1) Physicians and psychologists engaged in private office practice;
- (2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;
- (3) State and federally operated facilities;
- (4) Adult care homes licensed under Chapter 131D of the General Statutes;
- (5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General Statutes;
- (6) Persons subject to licensure under rules of the Social Services Commission;
- (7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services;
- (8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14);
- (9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a 12-step, self-help, peer role modeling, and self-governance approach;
- (10) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Division of Adult Correction of the Department of Public Safety, as described in G.S. 148-19.1; and
- (11) A charitable, nonprofit, faith-based, adult residential treatment facility that does not receive any federal or State funding and is a religious organization exempt from federal income tax under section 501(a) of the Internal Revenue Code.
- (12) A home in which up to three adults, two or more having a disability, co-own or co-rent a home in which the persons with disabilities are receiving three or more hours of day services in the home or up to 24 hours of residential services in the home. The individuals who have disabilities cannot be required to move if the individuals change services, change service providers, or discontinue services.

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary.

§ 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, developmentally disabled, or substance abusers without a current license issued by the Secretary.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

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Assisted Living, Adult Care Homes, Family Care Homes, Multiunit Assisted Housing with Services

§ 131D-2.1. Definitions.

As used in this Article:

...

- (3) **Adult care home.** – An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.

...

- (5) **Assisted living residence.** – Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multiunit assisted housing with services. As used in this section, "elderly person" means:
- a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or
 - b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

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- (9) **Family care home.** – An adult care home having two to six residents. The structure of a family care home may be no more than two stories high, and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.

...

- (10) **Multiunit assisted housing with services.** – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

- a. Emergency response system;
- b. Charges for services offered;
- c. Limitations of tenancy;
- d. Limitations of services;
- e. Resident responsibilities;
- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

...

- (14) **Resident.** – A person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.

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§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted housing with services; hospice care; obtaining services.

(a) **Adult Care Homes.** – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Individuals requiring continuous licensed nursing care;
- (3) Individuals whose physician certifies that placement is no longer appropriate;
- (4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
- (5) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home.

(b) **Multiunit Assisted Housing With Services.** – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing;
- (3) Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a home care or hospice agency licensed in this State;
- (4) Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
- (5) Psychotropic medications without appropriate diagnosis and treatment plans;
- (6) Nasogastric tubes;
- (7) Gastric tubes, except when the individual is capable of independently feeding himself or herself and caring for the tube, or as managed by a home care or hospice agency licensed in this State;
- (8) Individuals requiring continuous licensed nursing care;

- (9) Individuals whose physician certifies that placement is no longer appropriate;
- (10) Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by a uniform assessment instrument and who meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on a uniform assessment instrument;
- (11) Individuals whose health needs cannot be met in the specific multiunit assisted housing with services as determined by the residence; and
- (12) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in multiunit assisted housing with services.

(c) **Hospice Care.** – At the request of the resident, hospice care may be provided in an assisted living residence under the same requirements for hospice programs as described in Article 10 of Chapter 131E of the General Statutes.

(d) **Obtaining Services.** – The resident of an assisted living facility has the right to obtain services at the resident's own expense from providers other than the housing management. This subsection shall not be construed to relieve the resident of the resident's contractual obligation to pay the housing management for any services covered by the contract between the resident and housing management.

§ 131D-2.3. Exemptions from licensure.

The following are excluded from this Article and are not required to be registered or obtain licensure under this Article:

- (1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes;
- (2) Persons subject to rules of the Division of Vocational Rehabilitation Services;
- (3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration;
- (4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly; and
- (5) Institutions that are maintained or operated by a unit of government and that were established, maintained, or operated by a unit of government and exempt from licensure by the Department on September 30, 1995.

§ 131D-4.1. Adult care homes; legislative intent.

The General Assembly finds and declares that the ability to exercise personal control over one's life is fundamental to human dignity and quality of life and that dependence on others for some assistance with daily life activities should not require surrendering personal control of informed decision making or risk taking in all areas of one's life.

The General Assembly intends to ensure that adult care homes provide services that assist the residents in such a way as to assure quality of life and maximum flexibility in meeting individual needs and preserving individual autonomy.

Special Care Units

§ 131D-4.6. Licensure of special care units.

(a) As used in this section, the term "special care unit" means a wing or hallway within an adult care home, or a program provided by an adult care home, that is designated especially for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(b) An adult care home that holds itself out to the public as providing a special care unit shall be licensed as such and shall, in addition to other licensing requirements for adult care homes, meet the standards established under rules adopted by the Medical Care Commission.

(c) An adult care home that holds itself out to the public as providing a special care unit without being licensed as a special care unit is subject to licensure actions and penalties provided under Part 1 of this Article, as well as any other action permitted by law.

§ 131D-8. Adult care home special care units; disclosure of information required.

(a) An adult care home licensed under this Part that provides care for persons in special care units as defined in G.S. 131D-4.6 shall disclose the form of care or treatment provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosure shall be in writing and shall be made to all of the following:

- (1) The Department as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.
- (3) The Office of State Long-Term Care Ombudsman, annually, or more often if requested.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the resident's condition.
- (4) Staffing ratios and how they meet the resident's need for increased care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of residents with Alzheimer's disease or other dementias.
- (7) Frequency and type of programs and activities for residents of the special care unit.
- (8) Involvement of families in resident care, and availability of family support programs.
- (9) Additional costs and fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult care home subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(d) Nothing in this section shall be construed as prohibiting an adult care home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosures required under this section apply only to an adult care home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term "special care unit" has the same meaning as applies under G.S. 131D-4.6.

Nursing Homes

§ 131E-101. Definitions.

As used in this Part, unless otherwise specified:

- (1) **"Adult care home", as distinguished from a nursing home,** means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the shelter or personal care

their age or disability requires. Medical care in an adult care home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Adult care homes are to be distinguished from nursing homes subject to licensure under this Part.

- (1a) **"Combination home"** means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and adult care home.

...

- (6) **"Nursing home"** means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

§ 131E-114. Special care units; disclosure of information required.

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

- (1) The Department, as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.
- (4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.
- (5) Dementia-specific staff training.
- (6) Physical environment features designed specifically for the special care unit.
- (7) Alzheimer's disease and other dementia-specific programming.
- (8) Opportunities for family involvement.
- (9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home

that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term "special care unit" means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities.

Continuing Care Retirement Communities

§ 58-64-1. Definitions.

As used in this Article, unless otherwise specified:

- (1) Continuing care. – The furnishing to an individual other than an individual related by blood, marriage, or adoption to the person furnishing the care, of lodging together with nursing services, medical services, or other health related services, under a contract approved by the Department in accordance with this Article effective for the life of the individual or for a period longer than one year. "Continuing care" may also include home care services provided or arranged by a provider of lodging at a facility to an individual who has entered into a continuing care contract with the provider but is not yet receiving lodging.
- (2) Entrance fee. – A payment that assures a resident a place in a facility for a term of years or for life.
- (3) Facility. – The retirement community or communities in which a provider undertakes to provide continuing care to an individual.
- (4) Health-related services. – At a minimum, nursing home admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services.
- (4a) Home care services. – Defined in G.S. 131E-136.
- (5) Living unit. – A room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.
- (5a) Lodging. – A living unit as set forth in a contract approved by the Department in accordance with this Article.
- (6) Provider. – The promoter, developer, or owner of a facility, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care under a continuing care facility contract, or that represents himself, herself, or itself as providing continuing care or "life care."
- (7) Resident. – A purchaser of, a nominee of, or a subscriber to, a continuing care contract.
- (8) Hazardous financial condition. – A provider is insolvent or in eminent danger of becoming insolvent.

§ 58-64-25. Contract for continuing care; specifications.

- (a) Each contract for continuing care shall provide that:
 - (1) The party contracting with the provider may rescind the contract within 30 days following the later of the execution of the contract or the receipt of a disclosure statement that meets the requirements of this section, and the resident to whom the contract pertains is not required to move into the facility before the expiration of the 30-day period; and
 - (2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living

- unit in the facility under the terms of the contract for continuing care, the contract is automatically canceled; and
- (3) For rescinded or canceled contracts under this section, the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less (i) periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident; (ii) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or any contract amendment signed by the resident; (iii) nonrefundable fees, if set out in the contract; and (iv) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars (\$1,000) or two percent (2%) of the entrance fee.
- (b) Each contract shall include provisions that specify the following:
- (1) The total consideration to be paid.
 - (2) Services to be provided.
 - (3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the residents.
 - (4) The policies to be implemented if the resident cannot pay the periodic fees.
 - (5) The terms governing the refund of any portion of the entrance fee in the event of discharge by the provider or cancellation by the resident.
 - (6) The policy regarding increasing the periodic fees.
 - (7) The description of the living quarters.
 - (8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization will be responsible for the financial and contractual obligations of the provider.
 - (9) Any property rights of the resident.
 - (10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the facility; and
 - (11) Any requirement, if any, that the resident apply for Medicaid, public assistance, or any public benefit program.
 - (12) The procedures for determining when the individual will transition to receiving lodging and health-related services in the event that a contract allows for the provision or arrangement of continuing care without lodging.

Persons with Disabilities

§ 168-9. Right to housing.

Each person with a disability who is a citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes, and no person or group of persons, including governmental bodies or political subdivisions of the State, shall be permitted, or have the authority, to prevent any person with a disability who is a citizen from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with provisions of Chapter 122C of the General Statutes.

§ 168-1. Purpose and definition.

The State shall encourage and enable persons with disabilities to participate fully in the social and economic life of the State and to engage in remunerative employment. For purposes of this Article, the term "person with a disability" shall have the same meaning as set forth in G.S. 168A-3(7a).

§ 168A-3. Definitions.

As used in this Chapter, unless the context otherwise requires:

...

(7a) **"Person with a disability"** means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

- a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting a body system, including, but not limited to, neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature, lasting six months or fewer, and leaving no residual impairment. A disorder, condition, or disfigurement that is episodic or in remission is a physical or mental impairment if it would substantially limit a major life activity when active.
- b. "Major life activities" means functions, including, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, eating, sleeping, lifting, bending, standing, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
- d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as (i) medication, medical supplies, equipment, or appliances, low-vision devices, which do not include ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) learned behavioral or adaptive neurological modifications.

...